

108TH CONGRESS
2D SESSION

H. R. 3767

To amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2004

Mr. BERRY (for himself, Ms. SCHAKOWSKY, Mr. ALLEN, Mr. PALLONE, Mr. HINCHEY, Mrs. MCCARTHY of New York, Ms. SOLIS, Mrs. CHRISTENSEN, Mr. GRIJALVA, Mr. BOUCHER, Mrs. TAUSCHER, Mr. ROSS, Mr. TAYLOR of Mississippi, Ms. ROYBAL-ALLARD, Ms. LEE, Mr. SERRANO, Mr. STARK, Mr. MEEHAN, Mr. CUMMINGS, Mr. WAXMAN, Mr. CONYERS, Mr. BISHOP of New York, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the Medicare Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Prescription
5 Drug Savings and Choice Act of 2004”.

1 **SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRE-**
2 **SCRIPTION DRUG PLAN OPTION.**

3 (a) IN GENERAL.—Subpart 2 of part D of the Social
4 Security Act, as added by section 101 of the Medicare Pre-
5 scription Drug, Improvement, and Modernization Act of
6 2003 (Public Law 108–173), is amended by inserting
7 after section 1860D–11 the following new section:

8 “MEDICARE OPERATED PRESCRIPTION DRUG PLAN
9 OPTION

10 “SEC. 1860D–11A. (a) IN GENERAL.—Notwith-
11 standing any other provision of this part, for each year
12 (beginning with 2006), in addition to any plans offered
13 under section 1860D–11, the Secretary shall offer one or
14 more medicare operated prescription drug plans (as de-
15 fined in subsection (c)) with a service area that consists
16 of the entire United States and shall enter into negotia-
17 tions with pharmaceutical manufacturers to reduce the
18 purchase cost of covered part D drugs for eligible part
19 D individuals in accordance with subsection (b).

20 “(b) NEGOTIATIONS.—Notwithstanding section
21 1860D–11(i), for purposes of offering a medicare operated
22 prescription drug plan under this section, the Secretary
23 shall negotiate with pharmaceutical manufacturers with
24 respect to the purchase price of covered part D drugs and
25 shall encourage the use of more affordable therapeutic
26 equivalents to the extent such practices do not override

1 medical necessity as determined by the prescribing physi-
2 cian. To the extent practicable and consistent with the
3 previous sentence, the Secretary shall implement strate-
4 gies similar to those used by other Federal purchasers of
5 prescription drugs, and other strategies, to reduce the pur-
6 chase cost of covered part D drugs.

7 “(c) MEDICARE OPERATED PRESCRIPTION DRUG
8 PLAN DEFINED.—For purposes of this part, the term
9 ‘medicare operated prescription drug plan’ means a pre-
10 scription drug plan that offers qualified prescription drug
11 coverage and access to negotiated prices described in sec-
12 tion 1860D–2(a)(1)(A). Such a plan may offer supple-
13 mental prescription drug coverage in the same manner as
14 other qualified prescription drug coverage offered by other
15 prescription drug plans.

16 “(d) MONTHLY BENEFICIARY PREMIUM.—

17 “(1) QUALIFIED PRESCRIPTION DRUG COV-
18 ERAGE.—The monthly beneficiary premium for
19 qualified prescription drug coverage and access to
20 negotiated prices described in section 1860D–
21 2(a)(1)(A) to be charged under a medicare operated
22 prescription drug plan shall be uniform nationally.
23 Such premium for months in 2006 shall be \$35 and
24 for months in succeeding years shall be based on the
25 average monthly per capita actuarial cost of offering

1 the medicare operated prescription drug plan for the
2 year involved, including administrative expenses.

3 “(2) SUPPLEMENTAL PRESCRIPTION DRUG COV-
4 ERAGE.—Insofar as a medicare operated prescrip-
5 tion drug plan offers supplemental prescription drug
6 coverage, the Secretary may adjust the amount of
7 the premium charged under paragraph (1).

8 “(3) REQUIREMENT FOR AT LEAST ONE PLAN
9 WITH A \$35 PREMIUM IN 2006.—The Secretary
10 shall ensure that at least one medicare operated pre-
11 scription drug plan offered in 2006 has a monthly
12 premium of \$35. ”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 1860D–3(a) of the Social Security
15 Act, as added by section 101 of the Medicare Pre-
16 scription Drug, Improvement, and Modernization
17 Act of 2003, is amended by adding at the end the
18 following new paragraph:

19 “(4) AVAILABILITY OF THE MEDICARE OPER-
20 ATED PRESCRIPTION DRUG PLAN.—

21 “(A) IN GENERAL.—A medicare operated
22 prescription drug plan (as defined in section
23 1860D–11A(c)) shall be offered nationally in
24 accordance with section 1860D–11A.

25 “(B) RELATIONSHIP TO OTHER PLANS.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), a medicare operated prescription drug
3 plan shall be offered in addition to any
4 qualifying plan or fallback prescription
5 drug plan offered in a PDP region and
6 shall not be considered to be such a plan
7 purposes of meeting the requirements of
8 this subsection.

9 “(ii) DESIGNATION AS A FALLBACK
10 PLAN.—Notwithstanding any other provi-
11 sion of this part, the Secretary may des-
12 ignate the medicare operated prescription
13 drug plan as the fallback prescription drug
14 plan for any fallback service area (as de-
15 fined in section 1860D–11(g)(3)) deter-
16 mined to be appropriate by the Sec-
17 retary.”.

18 (2) Section 1860D–13(c)(3) of such Act, as
19 added by such section, is amended—

20 (A) in the heading, by inserting “and
21 medicare operated prescription drug plans”
22 after “Fallback plans”; and

23 (B) by inserting “or a medicare operated
24 prescription drug plan” after “a fallback pre-
25 scription drug plan”.

1 (3) Section 1860D–16(b)(1) of such Act, as
2 added by such section, is amended—

3 (A) in subparagraph (C), by striking
4 “and” after the semicolon at the end;

5 (B) in subparagraph (D), by striking the
6 period at the end and inserting “; and”; and

7 “(E) payments for expenses incurred with
8 respect to the operation of medicare operated
9 prescription drug plans under section 1860D–
10 11A.”.

11 (4) Section 1860D–41(a) of such Act, as added
12 by such section, is amended by adding at the end
13 the following new paragraph:

14 “(19) MEDICARE OPERATED PRESCRIPTION
15 DRUG PLAN.—The term ‘medicare operated prescrip-
16 tion drug plan’ has the meaning given such term in
17 section 1860D–11A(c).”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect as if included in the enact-
20 ment of section 101 of the Medicare Prescription Drug,
21 Improvement, and Modernization Act of 2003.

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